

NORMA H. CAMPBELL

IBLA 83-634

Decided June 15, 1983

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 70745 through A MC 70747, A MC 70749 through A MC 70752, and A MC 70755.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM, is mandatory, not discretionary.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Where a claimant inadvertently omits the names of several mining claims from the

affidavit of annual assessment work, which otherwise was properly recorded both in the county and with BLM, the omitted claims must be deemed conclusively to be abandoned under provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

3. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Norma H. Campbell, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Norma H. Campbell appeals the March 31, 1983, decision of the Arizona State Office, Bureau of Land Management (BLM), which declared the unpatented After Thought, Backup, W.F.I., Just in Case, Backdoor, Rusty's Luck, Lucy Bea, and Dryin Pan lode mining claims, A MC 70745 through A MC 70747, A MC 70749 through A MC 70752, and A MC 70755, abandoned and void because no proof of labor or notice of intention to hold the claims was received by BLM prior to December 31, 1980, for that calendar year, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

The claims were located in August and September 1976. The proofs of labor submitted to BLM December 15, 1980, were for the unpatented claims, Debbie's Luck, P Can, and Fryin Pan lode mining claims.

Appellant states the assessment work was performed on all the mining claims, and she thought the proofs of labor for all of the claims for 1980 had been submitted to BLM in a single envelope. As she received an acknowledgement from BLM, she thought she had complied fully.

The acknowledgement from BLM covered only the Debbie's Luck, P Can, and Fryin Pan claims.

[1] Under section 314 of FLPMA, the owner of a mining claim located before October 21, 1976, must file a copy of the location notice and evidence of assessment work with BLM by October 22, 1979, and a notice of intention to hold the claim or evidence of assessment work performed on the claim with BLM and in the county where the location notice is recorded prior to December 31 of each year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim abandoned and void. The recordation requirement of section 314 of FLPMA that evidence of assessment work or a notice of intention to hold be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary. Lynn Day, 63 IBLA 70 (1982).

[2, 3] The purpose of section 314(a) of FLPMA is not to ensure that assessment work is done on a mining claim but rather to ensure that there is a record of continuing activity on the claim so that the Federal Government will know which mining claims on Federal lands are being maintained, and which have been abandoned. See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. 1981). The statute expressly requires that a mining claimant file the instrument recorded in the local state office, whether proof of labor or notice of intention to hold the claim, in the proper BLM office. Where, as in this case, no proof of labor was received for the above-listed claims, there was no discretion under the statute for BLM to determine that the claims had not been abandoned. We can accept that appellant's error may have been inadvertent, but neither BLM nor this Board has any authority to excuse lack of compliance with the statutory requirements of FLPMA, or to afford relief from the statutory consequences. See Peter Laczay, 65 IBLA 291 (1982); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); Glen J. McCrory, 46 IBLA 355 (1980). As the Board stated in Lynn Keith:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative, and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371-72.

Appellant may wish to consult with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Gail M. Frazier
Administrative Judge

